

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-032**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER FOR JEFFERY McGUIRE

HAROLD DAVID MOSLEY, JEFFERY McGUIRE &
ALVIN NOBLE

RESPONDENTS

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and the Respondent Jeffery McGuire, and the members of the Commission having reviewed the Settlement Agreement filed on September 18, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED** as they pertain to McGuire, but remain in full force and effect as to the other Respondents;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if

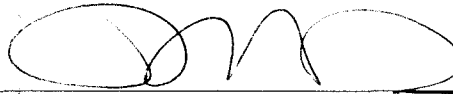
reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the

petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 12TH day of October 2006.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

Denise Moore Davidson, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 13TH day of October 2006:

JEFFREY D. MCGUIRE
P.O. BOX 538
MCDOWELL, KENTUCKY 41647-0538

And by regular mail to:

HAROLD DAVID MOSLEY
40 LITTLE DOTY BRANCH
DEMA, KENTUCKY 41859-9092


ALVIN NOBLE
HIGHWAY 680
P.O. BOX 661
MCDOWELL, KENTUCKY 41647-0661

And by messenger mail to:

STEPHEN C. BOYD
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212
Attorney for OMSL

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601


Bryan Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 06-MSRC-032

KENTUCKY OFFICE OF MINE SAFETY & LICENSING

COMPLAINANT

V. SETTLEMENT AGREEMENT BETWEEN OMSL & JEFFREY MCGUIRE

HAROLD DAVID MOSLEY,
JEFFREY MCGUIRE AND
ALVIN NOBLE

RESPONDENTS

* * * * *

Come the Complainant, the Kentucky Office of Mine Safety & Licensing (“OMSL”), and Respondent Jeffrey McGuire (“McGuire”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) McGuire hereby admits that he had numerous violations underground as set forth in the Complaint, from February 23, 2005 through March 24, 2005, at C & S No. 1 mine. This Settlement only concerns Jeffrey McGuire. This Settlement does not resolve the cases against Harold Mosley or Alvin Noble. Therefore, Jeffrey McGuire hereby agrees to the following:


1. The permanent revocation of his underground miner’s foreman certificate, (#A-140-87), effective upon the signing of this Settlement Agreement by both parties.
2. The suspension of his drill operator’s, gas detection, shot firer-conventional and shot firer-solid blasting certificates for three (3) years.
3. Further, the probation of his electrical worker’s and underground miner’s certificates for four (4) years.
4. During this four-year probationary period, Jeffrey McGuire shall comply with all state and federal mine safety laws and regulations. The willful violation by Jeffrey McGuire of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review

Commission to revoke his underground miner's certificate for the remainder of the probationary period.


5. Jeffrey McGuire further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "second offense", as that term is defined at 805 KAR 8:010, Section 1(13).

6. Jeffrey McGuire understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Jeffrey McGuire further states that he has carefully read this Settlement Agreement (or that the Settlement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

7. OMSL and Jeffrey McGuire acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.


JEFFREY MCGUIRE
P.O. Box 538
McDowell, Kentucky 41647-0538

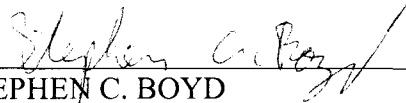
9-9-06
DATE


JOHNNY GREENE, Acting Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

9-18-06
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL and Jeffrey McGuire was mailed this 14 day of September, 2006, to: Jeffrey McGuire, P.O. Box 538, McDowell, Kentucky 416547-0538.



STEPHEN C. BOYD
C. MICHAEL HAINES, GENERAL COUNSEL
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
KY OFFICE OF MINE SAFETY & LICENSING

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